Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

AVA MAUREEN SAWYER,
Petitioner

V.

VIRGINIA STATE BAR,
Respondent

On Petition for Writ of Certiorari
To The Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

BY: AVA MAUREEN SAWYER
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35 pp

QUESTIONS PRESENTED

1. Does the Due Process Clause of the Fourteenth Amendment require that an attorney may be prosecuted and convicted in a State Bar disbarment proceeding only of such charges as have been lodged against him in substantial compliance with the prosecutorial and adjudicatory procedures and protections established by State law, and adjudicated only by a tribunal in which jurisdiction has vested under State law?

2. Does the Fourteenth Amendment's Due Process Clause require that, before an attorney may be subjected to a State Bar disciplinary hearing which may result in disbarment, the State must first state the manner in which alleged acts of the attorney are said to have violated applicable rules of conduct?

3. When a State adjudicatory tribunal has, without notice, *sua sponte* entered an order setting a hearing date in relation to a State Bar disciplinary proceeding and State law requires that the attorney affected be served with notice of such hearing date, does one certified mailing of notice of the hearing to a valid address, returned undelivered to the State, satisfy the tribunal's duty to notify the attorney of the hearing date under the requirements of the Due Process Clause of the Fourteenth Amendment?

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CITATION TO OPINION BELOW

The decision of the Supreme Court of Virginia in this cause is unpublished but is set forth in Appendix A. The Virginia State Bar Disciplinary Board's Order is unpublished other than in the Virginia Law Register, but is set forth in Appendix B. [The "Certification" of charges filed against Your Petitioner by the Virginia State Bar Fifth District Section II SubCommittee is set forth in Appendix C.]

JURISDICTION

The Supreme Court of Virginia issued its opinion on February 6, 2001 and denied Your Petitioner's Petitions for Rehearing on April 20, 2001 and June 4, 2001 (by Decrees set forth in Appendices D and E). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1257.

CONSTITUTIONAL PROVISION, STATUTES AND REGULATORY PROVISIONS INVOLVED

This case involves the Due Process Clause of the Fourteenth Amendment to the U. S. Constitution; Sections 54.1- 3935 & 3938 VA. CODE ANN. (1950) *as amended* [the "Code"]; Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia [Par. 13]; Sections II, III, & IV of the Virginia State Bar Council Rules of Disciplinary Procedure [VSBC Rules]; and Disciplinary Rules 1-102(A)(3) & (4), 2-105(C), 9-102(A)(2) & (B)(4) of the Virginia Code of Professional Responsibility. All are set forth in Appendix H.

STATEMENT OF THE CASE

Petitioner Ava M. Sawyer was admitted to the Virginia State Bar in May, 1979 and, after a one year judicial clerkship, commenced full-time private practice in Fairfax County, Virginia. In 1988, she commenced a solo practice in Fairfax and Loudoun Counties. With the exception of a lawsuit and the related Bar complaint underlying this cause, not one professional complaint has ever been lodged against Sawyer.*

In September, 1990, Sawyer reluctantly acquiesced to the desperate pleas of an elderly man and agreed to represent him in a distant and unfamiliar jurisdiction, in a weak and otherwise very unattractive fraud suit for rescission of a real estate sales contract.** [*See*, Ap. O, pp. 74-80, Ap. P] The contract the

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* To the contrary, *always* renowned for integrity, Sawyer was, for example, appointed by the Chief Judge of the Fairfax County Circuit to serve as one of six attorneys on the Circuit's Bar Applicant Character Review Committee, by his successor to serve as one of the Chief Judge's ten Commissioners in Chancery, honored as an Outstanding Woman Attorney of Virginia by the Virginia Women's Bar Association, awarded during her final year of law school the school's most prestigious merit scholarship, appointed to serve on her University Honor Council during college, and, in high school, elected Senior Class President and named an Outstanding American High School Student .

** Conner and Conner's local attorney, E. Scott Smalley, apprised Sawyer that no attorney in Conner's area of the State was willing to represent Conner because of the power and influence of the realtor and his attorney-partner in local circles, *the judiciary included.*

Moreover, although Conner was fully able to read and understand the four contracts he had executed [*See, e.g.*, Ap. AA, p. 125, Ap. CC, p. 127] with the realtor/realtor and attorney over the course of almost a year [a listing contract, an option to purchase, a sales contract and, at *Conner's* instigation, an *amended* sales contract], Conner claimed that he had not read *any* of his contracts before signing them, that either the realtor and/or the attorney had misrepresented the content of each of the contracts prior to his signing the same, that the reason

-- footnote continued on next page --

man [Conner] wished rescinded was one by which he had sold 82 landlocked acres in Frederick County, Virginia to a realtor and attorney,** subject to a life estate in his home and two surrounding acres.

Although Sawyer's fiancee, Dean Worcester, was initially unwilling to represent Conner because convinced Conner was lying about having been misled as to the content of the contracts he had executed, Worcester *also* ultimately relented* and agreed to serve as Sawyer's "litigator" co-counsel.**

Footnote continued from prior page:
why he had not *pre*-read the contracts was the acute pain he was experiencing (later relieved by successful surgery) when he executed some of the contracts, and the extremely harried circumstances under which he was presented all the contracts for signature. [This, *despite* his being adamant that by the time he signed the amended sales contract he wished rescinded, due to their prior misrepresentations, he definitely no longer trusted *either* of them.]

Also, because Smalley had only called Sawyer "in" at the "last minute" following his months at unsuccessfully attempting to obtain a settlement for Conner, as of Sawyer's initial interview with Conner, there were but two work days left before the statute of limitations was going to run on Conner's best, and *quite* possibly *only*, viable chance of avoiding his sales contract. [The many other negative factors relating to Conner's representation are too numerous to list here.]

* When Sawyer explained that her real reason for believing that Conner had been taken advantage of was that he appeared to not have fully appreciated the concept of the "present value of money" -- i.e., that he had not initially appeared to have had a sophisticated appreciation for the fact that the $700,000 due him under his contract was to be paid over several years without interest -- Worcester agreed to join as trial counsel.

** Although Sawyer's practice has always involved complex litigation matters, due to her concerns that she will be insufficiently articulate and unable to think as quickly as is necessary in a trial setting, Sawyer has *never* acted as trial counsel in any but a handful of *un*complex cases, and has otherwise *always* associated "trial" counsel.

It was understood that any fees earned would be ratably divided between Sawyer and Worcester's firm according to the two attorneys' relative respective efforts in the matter.

Considering the nature of Conner's allegations against the realtor and attorney, and because so wary of Conner, Sawyer went to extraordinary lengths not only to assure that the reasonableness of Conner's fees would be beyond question to anyone knowledgeable about the underlying facts of the matter* [*See*, Ap. O, pp. 81-87, Ap. P], but she was *also* extraordinarily cautious to assure that Conner and his live-in lady friend, Ms. Funk, had *ample* opportunity to, and *did in fact*, carefully review and discuss Conner's draft fee agreement before Conner executed the fee agreement **-- *and* to assure that Conner's knowledgeable, considered, and free entry into his fee agreement was clearly documented, via specific statements to that effect signed by both Conner and Ms. Funk.

Notably, in order to assure that there would not possibly be any later disputes over the amount of any contingency fees as might be earned, Sawyer had also drafted Conner's fee agreement to provide that any realty returned to Conner was to be re-sold and that the amount of attorneys fees payable would be determined by the sales price. The draft agreement (which was later executed 'as was' by all the parties) *also* provided that Conner would execute documentation to secure an attorneys lien pending the sale of the realty.

Several months after his engagement to Sawyer later ended, he having no interest in the case, Worcester, without cause, abruptly, *and unequivocally*, abandoned Conner's suit.

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* As an example, although such would not be apparent to an unknowledgeable person merely reviewing *the face* of Conner's contract, Sawyer's fee arrangement with Conner actually contained *MUCH less* than a 1/3 contingency fee agreement.

** *See*, Ap. 0, p. 87, Ap. P, p. 89.

Sawyer later attained an excellent settlement of Conner's contingency litigation, * a settlement which consisted of both substantial cash *and* substantial real estate.

Sawyer prepared a detailed "closing statement" for Conner respecting the calculation of the fees due her in relation to the monetary proceeds received under Conner's litigation settlement, and she hand-delivered the same to Conner on January 31, 1992. [*See*, Ap. K, p. 59-62].

Conner agreed that $134,176.54 was the amount of the contingency fee due Sawyer in respect to the *monetary* proceeds he received under his litigation settlement and -- he knowing the falsity of Worcester's threatened claim that he had not abandoned Conner's litigation [*See*, Ap. Q, p.91-95]-- Conner also agreed that his fees be disbursed *solely* to *Sawyer*. [*See*, Ap. C, p. 14] However, *immediately* after Sawyer had verbally settled his case, Conner began to indicate his intent not to *otherwise* abide by his fee agreement. After *first* obtaining Sawyer's waiver of her right to require any sale of the 42 acres during his lifetime, Conner *then* immediately signaled his intent to renege on his promise to execute a lien to secure any fees due her for obtaining the 42 acres -- and commenced to *constantly* badger her to tell him a sum he could pay her in lieu of the lien. Although convinced that such could *only* inure to her detriment, Sawyer nonetheless *eventually* capitulated, and agreed to waive her rights to fees under the fee contract in relation to the 42 acres and set a definitive money figure Conner could pay her in lieu

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* Conner's settlement was, in essence: the $660,000 in proceeds which had previously resulted from a jointly-effected sale of 40 acres of Conner's former property to the local School Board, plus the some $35,000 in interest which had accrued on the $460,000 not previously disbursed to Conner, plus the return to Conner of the remaining 42 acres, acreage which the County had since agreed to improve with public water, sewer, and excellent road frontage.

of the lien -- with an obvious implied term of "reasonableness" -- after Conner agreed to retain independent counsel in connection with their lien buy-out.* Sawyer considered her agreement with Conner a novation in substitution of the severable aspect of their fee agreement pertaining to the 42 acres.

However, when Conner's attorney, Smalley, eventually met with Sawyer to discuss the matter, Smalley seized the opportunity to instead accuse Sawyer of having grossly overreached/defrauded Conner via her fee arrangements with him, leveling *numerous* outrageous and false claims in the process. [Ap. R, p. 98-101] As a consequence of that meeting, Sawyer suffered a complete breakdown and was immediately engulfed by a severely disabling depression from which she has yet to fully recover. [Ap. Q, p. 95-97, Ap. R, p.101] Sawyer nonetheless thereafter set an *entirely* reasonable lien buy-out figure under her novation agreement with Conner ($93,824) and, in view of certain stipulations Smalley had made during the course of his meeting with Sawyer, a buy-out price limited to an amount which Sawyer believed Conner *equitably estopped* to deny as reasonable. [Ap. Z; Ap. S, p. 103; Ap. R, p.100,101] She also *alternately* offered for Conner to elect to revert back to simply abiding by their fee agreement. However, after Conner failed to accept that offer and *also* failed to expressly approve her lien buy-out price, Sawyer eventually put Conner, via Smalley, 'to terms,' and -- notably Smalley registered *absolutely no* protest when Sawyer apprised him that unless he notified her by a certain

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* Before setting her lien buy-out figure, Sawyer, a solo practitioner, wanted to hear *another* attorney's thoughts, *particularly* as to whether the fact that she had obtained a settlement rather than a litigated victory would have any bearing on what an *overall* "reasonable" fee would be for the results she had achieved for Conner. Sawyer *also* wanted an *independent* witness as to Conner's ongoing competency, as Conner had by that point in time been living *alone* for many months.

time that Conner wished to revert back to their fee agreement, she would consider Conner bound by the lien buy-out price she had set. [Ap. S] When that time expired without such notice or any other communication from Smalley or Conner, Sawyer disbursed to herself from the escrow funds in her possession the amount of the lien buy-out price,* which left some $12,000 remaining in Sawyer's possession in escrow for Conner.

More than a year later, Smalley filed a suit for rescission of Conner's fee contract and, his prior accusations of *overreaching* notwithstanding, asserted as his *sole* ground for rescission a claim that the contractual proviso that Conner re-sell any realty returned to him was "*unconscionable*" and, therefore, *void*.**

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* The foregoing notwithstanding, Smalley nonetheless later attempted to re-open discussion on the matter, *acting* as though the payment due Sawyer remained unresolved. Sawyer, still overwrought and bedridden with depression [Ap.], did not engage in further contact with Smalley, but as soon as medical intervention enabled her to do so (approximately three-four months later), Sawyer retained counsel to represent her and returned *the entirety* of the previously disbursed lien buy-out funds, plus *all* pro-rata interest which had accrued in her savings accounts in the interim, *plus the other $12,000 or so* in her attorney trust account, into interest- bearing attorney escrow trust accounts at the best available interest rates. The funds remained therein until Sawyer subsequently disbursed the *entirety* of same to Conner pursuant to a court decree).

** This, even though Conner had *not* been required under the fee contract to sell <u>other</u> than *subject to* his life estate in his home and two acres, *and* even though Sawyer had long since *waived* the sale proviso.

In the absence of *any* evidence of *any* wrongdoing *or* to intimate that Conner had not understood his fee agreement, the Judge ruled at the conclusion of Conner's 'trial' *exactly* as he had stated he would *PRE*-trial, in chambers, during his unsuccessful effort to *coerce* Sawyer into waiving her right to a trial by impressing upon her the *absolute futility*, from *her* point of view, of there being any trial of the matter: He awarded Conner rescission and declared as "reasonable" attorneys fees for Conner's representation "the $134,000" previously paid to Sawyer and then ordered Sawyer to refund to Conner the $10,000 Conner had previously paid to Sawyer and Worcester for the non-contingent legal services they had provided him four years earlier. [*See*, Ap. M, p. 67] (The pretext the Judge employed as his 'reason' for awarding rescission was that *Sawyer* had not *proved* that she had "*adequately explained*" the fee contract to Conner.) The Judge then proceeded on to award Conner a penalty against Sawyer in the range of $20,000.00 -- relief for which Conner *had NOT prayed*. [That penalty was in the guise of an award to Conner of retroactive interest over the previous two years at the unattainable *legal* rate on Conner's escrowed funds].

Then, even though *WELL* aware that *absolutely NO* issue respecting Worcester's entitlement to a portion of Conner's contingency fees was in *any* wise *in controversy* in the cause, the Judge ordered Sawyer to pay Dean Worcester $62,000.00!

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* Because irrelevant to the issues presently before this Court, Your Petitioner will not here attempt to cite the many gross improprieties and irregularities -- *ALL* adverse to her -- which transpired throughout the course of the Judge's "adjudication" of Conner's suit. Suffice it here to say, however, the Judge's hostility towards Sawyer was *quite* overt *from the very inception of* the very *first* proceeding in the cause. [*But see*, for example, Ap. V]

It has always been Sawyer's legal position that the Judge's gratuitous awards of unaccrued and unattainable interest to Conner and of a $62,000.00 money judgment to Worcester were severable aspects of the Court's decree beyond the jurisdiction of the Court, void *ab initio*, and subject to collateral attack.* [*See*, Ap. V, Ap. W] *Nonetheless*, although *also* quite likely void *ab initio*, Sawyer promptly complied with *all other* aspects of the Court's decree, and she paid over to Conner not only all of the escrow funds in her possession, including all interest accrued thereon, but also significantly *more* than *an additional* $10,000.00. [*See*, Ap. X]

Conner's Judge later declined Worcester's request that a capias be issued for Sawyer's arrest for refusing to pay him $62,000, the Judge indicating that he did not believe he had had authority to have *ordered* Sawyer to pay Worcester money. [*See*, Ap. T]

Worcester subsequently instituted Debtor Interrogatories of which Sawyer *first* received notice approximately one week *AFTER* the date on which they were to have occurred. [*See*, Ap. W, p.114; Ap. T] She later received one day of notice of a hearing Worcester had, unbeknownst to her, scheduled *many* weeks earlier for her to "show cause" why she shouldn't be held in contempt of court for not having appeared at his Interrogatories. Rather than continue the matter for a hearing upon *proper* notice, however, the Judge scheduled to hear

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* The Court's rulings were not appealed due to a *very* untimely "computer crash." Sawyer was therefore left *unable* to act to have the two void orders set aside in the absence of steps taken to enforce those severable aspects of the Court's decree against her. [Notably, because under Virginia law the legal theory of "money had and received" would bar recovery of any monies paid over to Conner and/or Worcester, there was, accordingly, no option available to Sawyer to pay over the extra $20,000.00 to Conner and the $62,000.00 to Worcester and then sue to recover back those sums as not having been owed in the first place.]

the matter issued a capias for Sawyer's arrest.*

Then, convinced of having absolutely *no* chance *whatever* of having Worcester's 'judgment' against her set aside in Conner's jurisdiction *REGARDLESS* of the *MERITS* of her jurisdictional objections, Sawyer vacated her home to avoid being arrested, as otherwise the validity of Worcester's "judgment" *would* be adjudicated in Conner's Circuit, and such would *doubtless* result in a *final* ruling of *validity*.** [*See*, Ap. N, p. 71]

On January 18, 1995, David Andre, the attorney who had ultimately represented Conner in his suit for rescission against Sawyer, filed a complaint against her with the Virginia State Bar. Andre's only allegations still *somewhat* relevant were his claims that Sawyer had "failed to provide Mr. Conner with a closing statement"/ "render appropriate accountings" in violation of DR 2-105, and that, in violation of DR 9-102, Sawyer had disbursed, "without the knowledge or consent of Mr. Conner" client funds "in dispute" to herself and that,

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* Notably, he did so even though Sawyer had timely delivered *before* court commenced a lengthy letter to the Judge explaining not only that she had received no advance notice of the Interrogatory proceedings, but *also* her concern that a personal appearance at the 'show cause' hearing might compromise her legal claim that the *Conner* Court had no *in personam* jurisdiction over her in respect to any claim of *Worcester* against her, and that she had received insufficient notice of the show cause hearing to have retained counsel to enter a special appearance in Winchester on her behalf. [Sawyer had discharged *Harris* after the Conner "trial," and he had already made a *general* appearance in the cause *anyway*.]]

** Sawyer knew she would have virtually no chance of having a discretionary appeal granted by the Virginia Supreme Court. *Indeed*, even when Sawyer later filed a Petition for Writ of Prohibition with the Virginia Supreme Court, which has *non*-discretionary *original* jurisdiction to adjudicate such Petitions in Virginia, Sawyer's Petition was dismissed, *without* a hearing, *without* explanation, and *even before any response was filed.*

despite a court order to her to do so, she was "*unable*" "to return all the funds she was ordered to." At Bar Counsel's request, Sawyer filed a written response to Andre's complaint, explaining, amongst other things, that not only had she provided Conner with a very detailed written closing statement,* she had paid to Conner ***EVEN MORE*** money than the difference between the total amount of the escrow monies which had come into her possession (plus all interest accrued thereon, minus authorized expenses and payments to Conner and others on his behalf) and the amount of attorneys fees adjudicated as due for Conner's representation. She also briefly addressed such issues as the invalidity of the Court's severable award to Conner of retroactive interest at the legal rate, and the estoppel situation relating to her lien buy-out agreement with Conner, and she asked opportunity to explain relevant issues in detail.

Bar Counsel thereafter apprised Sawyer that the matter was being referred to a District Committee "for further investigation" and that a Bar Investigator would be contacting Sawyer for further information. When he did so, the Bar Investigator asked Sawyer if she was aware of the *capias* Worcester had had issued for her arrest, and Sawyer explained her legal grounds for refusing to comply with the court order to her to pay Worcester $62,000.00, apprised the Investigator that she had moved out of her home to avoid arrest so that the validity of Worcester's "judgment" would not be adjudicated in *Conner's* Circuit, advised him how she could always be contacted by the Bar at her mother's home in Chester, Virginia, and in general provided the Investigator a narrative of an hour or two of the justifications for ***and the principles behind*** her actions. [*See, e.g.*, Ap. M & Ap. N]

Apparently satisfied with Sawyer's explanations and seemingly unconcerned about Andre's charges against her, the Bar Investigator apprised Sawyer that he had no other questions and that it appeared unnecessary for Sawyer to

submit any further documentation to evince the veracity of her statements. (She had provided *extensive* discovery in the Conner litigation against her.) [*See*, Ap. Y]

Sawyer received no further correspondence from the Bar. *Nevertheless*, even though the Bar's authority to institute Charges of Misconduct against an attorney are limited to the 60 day period following the Bar's receipt of a related complaint -- and that authority may *only* be exercised by State Bar Counsel by the filing of Charges of Misconduct with a State Bar District Committee with notice to the attorney thereof within that 60 day period [Sections II & III (A), VSBC RULES], *more than FOUR YEARS* after the Bar's receipt of Andre's complaint, a District SubCommittee purported to "certify" charges against Sawyer to the State Bar Disciplinary Board for adjudication -- and even though no charge against Sawyer had *ever* been filed by Bar Counsel with the District Committee.* [Section III(A), VSBC RULES.] [*See*, Ap. C]

A copy of the District SubCommittee's "Certification" of charges having been mailed to Sawyer by one of its members, being completely unfamiliar with Bar disciplinary procedures, Sawyer called Bar Counsel on Monday, April 26, 1999 to ask what procedure would be followed by the Bar. Bar Counsel apprised her that the Clerk of the Disciplinary System would thereafter call Sawyer to schedule a hearing before the Disciplinary Board with her, and that otherwise Sawyer should review Paragraph 13 of the Rules of Court and the State Bar Council Rules of Disciplinary Procedure to discern applicable procedure.

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* Dated April 21, 1999, the SubCommittee's "Certification" referenced no subject other than those Sawyer had previously addressed in her written response to Andre's complaint and her conversation with the Bar Investigator, with the exception of two ludicrous accusations that Sawyer had written two large checks to charity *out of her attorney trust account*. [*See*, Ap. C]

Although, by State law, District Committee/SubCommittee "Certifications" to the State Bar Disciplinary Board must contain a "narrative of *the complaint*" and specify *"the reasons for* its decision[s]" to charge an attorney with Disciplinary Rule infraction(s) [VSBC RULES (IV) (D)], and "Certifications" ***must*** include "sufficient facts to reasonably notify . . . the Respondent of the basis for" the Certification [Par.13(B)(12) of the Rules of Court], with the sole exception of a characterization of her lien buy-out disbursement and two charitable donations as having been "unauthorized" transfers of funds made while her fees were "in dispute," the putative "Certification" filed against Sawyer consisted *solely* of a series of *non*-conclusory allegations of 'fact' followed by a rote recital of several lengthy and multi-faceted Disciplinary Rules (DRs) -- *and it in NO fashion* indicated which of the alleged 'facts' were said to have violated any particular DR *or* in what manner(s), leaving Sawyer haplessly uninformed as to the nature of the SubCommittee's "charges" against her.

Moreover, the Subcommittee's "Certification" to the Disciplinary Board was never approved by a District Committee as required by State law. [VSBC RULES IV(B) (3) &(D).]

Sawyer timely filed a Motion to Dismiss the "Certification" on the aforesaid grounds, and also asserted therein that the State's prosecution against her violated her U. S. Constitutional rights to Due Process of law because of the State's various violations of applicable State law, because the "Certification" did not provide her with sufficiently fair notice of the charges against her, because she had not been afforded notice that any charge had been filed against her prior to the SubCommittee's hearing, and also because the State's extreme delay in its pursuit of charges against her rendered the prosecution prejudicially and unconstitutionally stale. [See, Ap. I]

Sawyer asked for, and awaited, the scheduling of a hearing on her Motion to Dismiss. However, in mid-August, 1999, she received a copy of a Decree overruling her Motion. [Ap. F] Sawyer then renewed her earlier efforts to prepare an Answer to the Certification, but was diverted by the needs of a childhood friend then facing imminent death. Shortly after his death on September 16, Sawyer re-commenced her efforts to address Bar matters, and began by reviewing two very large packages of documents which had been mailed to her by Bar Counsel. It was during that process that Sawyer *first* saw a copy of a Disciplinary Board decree which had been entered on May 7, 1999 setting her Board hearing for September 24, 1999 [*See, e.g.*, Ap. U, pp.107,108] and notifying her of her right to elect, within 21 days of that decree, to have all charges against her adjudicated by a three member panel* of circuit court judges.

Even though the Disciplinary Board had not complied with its regulatory mandate to *serve* the attorney with notice when a Board hearing is set *and* at least 21 days in advance of the hearing [Par.13 (C)(5)(a) of the Rules of Court],**

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* NOTE: Not only had the Clerk of the Disciplinary System never called Sawyer to schedule a hearing with her, Sawyer had communicated with *both* the Clerk's Assistant and Bar Counsel several times by phone and mail over the preceding several months and *not once* had *any* mention been made to Sawyer of her hearing date or of *any* Board order.

** It is undisputed that, while at her mother's home working frantically to prepare her Motion to Dismiss and *attempting* to prepare an Answer, Sawyer was forwarded a copy of the Board's decree by the Clerk of the Disciplinary System via a certified mailing which was returned to sender without delivery -- *and* that *NO other* attempt was *ever* made to notify Sawyer of her hearing date. [*See*, Ap. L] [Notably, other than a May 10, 1999 Board decree directing the submission of a copy of all evidence prior to the Board hearing, which was also forwarded to Sawyer by certified mail and returned to sender during that same time-frame, Sawyer received *all* other mailings, both certified and regular, forwarded to her.] [*See*, Ap. L.; Ap. U]

Sawyer's prompt, and compelling, request for a continuance of her Board hearing* was denied. [Ap. G; Ap. U, p.107]

At Sawyer's hearing, Bar Counsel withdrew all charges relating to the two checks to charity previously wrongly alleged to have been written out of Sawyer's Attorney Trust Account and she also withdrew all charges against Sawyer under DRs 2-105(B), 9-102(A)(1), and 9-102(B)(3).

The Board dismissed all charges relating to Sawyer's *fee* arrangements with Conner, i.e., all charges under DR2-105(A), and the Certification *itself* had recognized the validity of Sawyer's $134,176 disbursal to herself.

As a result, the only *remaining* allegations which had been "certified" by the SubCommittee against Sawyer were as follows:

1) Following Sawyer's receipt of certain funds distributed to her for Conner's benefit, certain monies were paid Sawyer with Conner's consent, but then a "dispute arose as to the remainder of the funds," and Sawyer "refused to turn over the remaining funds to Mr. Conner," allegedly "claiming them as her fee." (Paragraph 11)
2) "During the time the Respondent's fees were in dispute" Sawyer made an "unauthorized transfer" out of her Trust Account on April 8, 1992 in the amount of $93,823.00. (Paragraph 12)

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* Besides offering suspension of her license pending adjudication of the cause, Sawyer explained her short notice of the hearing, the fact of her years of severe depression and the enormous toll that it had taken upon her mental functioning, that she had not practiced law in years and had very limited trial experience, and that because the Board's adverse ruling on her Motion to Dismiss had only been received four-five weeks earlier, and the intervening situation relating to her childhood friend, she was unprepared for, and had not yet retained counsel to represent her at, trial proceedings before the Board.

3) A court decree was later entered containing "findings" that "the amount still owed" Conner by Sawyer was $117,085.94" and that interest on [that]sum would accrue at 8% retroactively for two years, and which also contained an order to Sawyer to pay Worcester $62,000.00. (Paragraphs 13,14)
4) Sawyer "did not pay the majority of the interest awarded Mr. Conner by the court" (Paragraph 14) and she did not pay $62,000.00 to Worcester (Paragraph 14), and that
5) Sawyer failed to appear at a "show cause hearing scheduled to determine why she should not be held in contempt for failing to pay Mr. Worcester's fees" and a *capias* was issued for her arrest. (Paragraph 14)

Although, in Virginia, other than in certain emergency situations inapplicable in the case at bar, *ONLY* State Bar District Committees/SubCommittees have the discretion/ authority to certify charges to the Disciplinary Board for adjudication [Par.13 (C)(3) of the Rules of Court], Sawyer was convicted by the Board of several DR violations based *ONLY* upon *myriad* allegations *not even referenced* in the SubCommittee's "Certification"-- and leveled against Sawyer *solely* by *Bar Counsel* -- and *only* at the *conclusion* of

Sawyer's Board hearing!* [*See*, Ap. CC , *Compare* Ap. C]

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* *For example*, even though the "Certification" had *not even referenced* Sawyer's January 31,1992 letter to Conner -- and *much less* that it had been *misleading* in *any* fashion, *and* it had not *even inferred* that Sawyer had ever *misled* Conner or Smalley *or* that Sawyer *had not disclosed "until suit was filed"* that she had disbursed escrow funds to herself, Bar Counsel stipulated at *the conclusion* of Sawyer's hearing that such assertions were the *SOLE* grounds for the Bar's "charges" against Sawyer under DR1-102(A)(4). [*Notably*, because the Certification against Sawyer had in *NO* wise intimated *any* such accusation against her, Sawyer was caught *completely* off-guard at the Board hearing by Scott Smalley's "testimony" to the effect (-- essentially really *only* by *innuendo* and by affirmative responses to 'stacked' questions by the Bar Counsel --) that Sawyer and Conner were in a fee dispute at the time Conner retained Smalley to represent him in relation to the lien-buy out *and* by Smalley's testimony to the effect that Sawyer had '*misled*' Smalley into thinking that the $134,176 in fees due her in relation to the *monetary* aspect of Conner's settlement had *not* been disbursed to her. Sawyer was, accordingly, *totally* unprepared to effectively cross-examine Smalley on such matters when Smalley then *repeatedly* refused to give *direct* answers to *her questions* seeking to clear up the misimpressions left by Smalley's direct testimony. [*See*, Ap. AA and Ap. BB] *Also* because caught off-guard by those insinuations, Sawyer thereafter did *not even* have the presence of mind to argue to the Board such matters as the fact that Smalley had not bothered to interview his client well enough to ascertain the *true* state of affairs and the *actual* issues with respect to which his client, Conner, had come to him for representation did *NOT* translate into *Sawyer having misled Smalley* merely because she did not later specifically apprise him of matters of which she quite naturally *assumed* he was *already* aware .

Similarly, Bar Counsel stipulated that the *ONLY* basis of the Bar's "charge" under DR 2-105(C) was the fact that Sawyer's closing statement had not reflected that the $134,176 payment to her approved by Conner *had been effected via three checks [totaling* $134,176] [*See*, Ap. CC & Ap. K]. *Moreover*, Bar Counsel *ALSO* asserted that Sawyer had *evaded* some unspecified "service of process" and that *that*, and her *evasion* of 'the' *capias* formed the bases of "the Bar's charges" under DR1-102 (A)(3). The" Certification" had *not*, however, cited *evasion* of *any* process, *any capias included*, as a basis for a disciplinary charge against Sawyer. [Notably, the SubCommittee only alleged *the existence* of a particular capias; however, the mere *existence* of a *capias* against an individual is *neither* "*a deliberately wrongful act*" *nor* "*a crime*."]

Moreover, the Board issued many other completely *erroneous*, disparaging and irrelevant 'findings' against Sawyer in respect to matters *never* even argued *by Bar Counsel*. Examples were the Board's 'finding' in Paragraph 7 respecting Sawyer's "gutsy move" statement * and its "finding" in Paragraph 8 that "[a]t the time of the fee litigation, [Sawyer] *still* held $1,626.76 of the settlement proceeds in her general trust account"--a subject *not even mentioned* at Sawyer's Board hearing -- *other*, that is, than by Sawyer's *uncontradicted* testimony *to the contrary*.

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* The Board's inane finding that it was "uncontradicted" that Sawyer "admitted" that she told the Bar Investigator that it was a "gutsy move" on her part to disburse the $93,823.47 lien buy-out monies "*in order to force Mr. Conner and Mr. Worcester to deal with her although she admits that she cannot explain how removing the money from her trust account would have affected her negotiations* since she did not advise anyone that she had transferred those funds out of her trust account" was a "finding" of the Board not only *not* based upon *any* allegation in the Certification, the Bar Investigator *himself*, on cross-exam, *recanted* his earlier-stated recollection in that regard -- and, *moreover*, that 'finding' was *DIRECTLY* contrary to *Sawyer's testimony* respecting her "gutsy move" statement to the Investigator:

> As Sawyer *attempted* to explain to the Board, her belief as to applicable disciplinary regulations at the time of her disbursal of the $93,823.00 was that she was *ENTITLED to disburse those funds if* she was *in fact entitled to the monies disbursed* [*and* that it was] because of Sawyer's *inability* [at that point in time] *to have researched the equitable estoppel issue* and because her recollection of Virginia law was that it is very poorly defined *and* relatively unfavorable in its stance in relation to equitable estoppels that Sawyer perceived it a 'gutsy move' on her part to disburse funds to establish her reliance upon the estoppel [in order] to preserve her claim to the estoppel she believed existed . . .. Sawyer's Reply Brief to the Virginia Supreme Court, pp. 13, 14.

On the *other* hand, the Disciplinary Board refused to *even consider* Sawyer's arguments that the two severable court orders with which she had not complied (legal rate interest to Conner and $62,000 to Worcester) were void *ab initio*, that no final adjudication had ever occurred stating to the contrary, that she accordingly had no legal duty to comply with those orders, and that she could not be said to have violated *any* Disciplinary Rule merely by standing on her legal right *not* to pay money to people which she did *not owe* them. [*See, e.g.*, Ap. V, W] *Similarly, neither* would the Board consider the fact that the *capias* issued against Sawyer was *likewise* unsupported by jurisdiction -- and that Sawyer accordingly had no legal or moral duty to respond to same. [*See, e.g.*, Ap.W, p.114]

On appeal to the Virginia Supreme Court, Sawyer raised all of the previously referenced irregularities and legal objections, and she also objected that the Disciplinary Board did not have jurisdiction to adjudicate *any* charge against her for such reasons,* and that such violated her U. S. Constitutional right to Due Process of law. Those issues were raised in Sawyer's Assignments of Error, her Opening Brief, and the same were expounded upon in greater detail in her Reply Brief and in her first Petition for Rehearing. [*See, for example*, Aps. J & I]

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* Under Virginia law, until an attorney is properly served or files an Answer, the adjudicatory body having jurisdiction to adjudicate disciplinary charges against him *cannot* be determined. [See, Par. 13 (C)(5)(a)(i)&(ii) of the Rules of Court; Code Section 54.1-3938.] *Indeed, just* as Sawyer stated in her initial Petition for Rehearing to the Virginia Supreme Court (p. 13):

> "*until* Sawyer *is* given the notice to which she is entitled by the terms of Section 54.1-3938, her 21 day period within which to elect to have the Bar's charges against her determined by *a panel of judges rather* than by *the Disciplinary Board* does not even *begin* to run, as Sawyer has *never* consented to the jurisdiction of the Board in accord with the provisions of Subsections (i) and (ii) of Part 6, Section IV, Paragraph 13(C)(5)."

The Virginia Supreme Court, without any real analysis of any of the many legal issues Sawyer raised respecting the adequacy of the charges leveled and the proof adduced against her,* sustained the Board's rulings, and then denied Sawyer's Petitions for Rehearing.** [Aps. A, D, & E]

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* The following are examples of *some* of the deficiencies respecting Sawyer's convictions which were raised in Sawyer's Assignments of Error in her Opening Brief to the Virginia Supreme Court (pp. i & ii):

IV. SAWYER'S JANUARY 31, 1992 CLOSING STATEMENT RESPECTING THE $134,176.53 FEE DISTRIBUTION DID NOT VIOLATE DR 2-105(C) BECAUSE THE STATEMENT CONTAINED *ALL* OF THE INFORMATION THAT RULE 2-105(C) REQUIRES, TO WIT: A STATEMENT OF THE AMOUNT OF SAWYER'S FEE *AND* THE METHOD OF ITS DETERMINATION.

VIII. SAWYER DID NOT VIOLATE DR 9-102(B)(4) BY FAILING TO PAY CONNER MONIES BECAUSE THE *ONLY* MONIES WHICH SAWYER DID *NOT* PROMPTLY PAY OVER TO CONNER WERE MONIES *NEVER RECEIVED* BY SAWYER AND, THEREFORE, *NEVER "FUNDS" IN SAWYER'S POSSESSION*.

IX. THE DISCIPLINARY BOARD ERRED IN FINDING SAWYER IN VIOLATION OF DR 9-102(B)(4) FOR FAILING TO PROMPTLY PAY CONNER AND WORCESTER MONIES BECAUSE THERE WAS NO EVIDENCE ADDUCED AT SAWYER'S HEARING THAT *EITHER* WORCESTER *OR* CONNER HAD *EVER* REQUESTED SAWYER TO PAY OVER TO THEM THE MONIES ADJUDICATED BY THE FREDERICK COUNTY COURT TO BE DUE THEM.

** Indeed, *even* in respect to the jurisdictional issues Sawyer raised in respect to the absence of proper service of notice of the cause and of the hearing, the Virginia Supreme Court simply ruled, in essence, that because Sawyer was not residing at her address of record with the Virginia State Bar [a post office box] and because she was avoiding a capias [and *inferring* that her valid post office box address was *invalid* because Sawyer had stated at her Board hearing that, due to her ongoing severe depression, she had not been engaged in the active practice of law for many years as of 1999 and, as a result, she had only been checking her box for mail approximately once per month [See Ap. U; Ap. A], Sawyer was not entitled to the notice of State Bar Disciplinary proceedings mandated by State statute, which service could have been effected *regardless* of Sawyer's personal whereabouts *or* the validity of her mailing address.

REASONS WHY CERTIORARI SHOULD BE GRANTED

1) The issue of whether or not the Fourteenth Amendment's Due Process Clause requires that, in exercising its power to permanently deprive a citizen of significant property/liberty interests, a State must act at least in substantial compliance with the procedural protections and regulatory provisions which the State has enacted to safeguard its citizens from inappropriate State action, is a matter which has not only been answered in the negative by the Supreme Court of Virginia in the case at bar, but also by the U. S. Courts of Appeal for the Fourth and Fifth Circuits. However, besides eviscerating the very concept of *due* process of law, such rulings starkly contrast with legal principles long-recognized by this Court, and also conflict with decisions of other U. S. Courts of Appeal and State Courts of last resort. Accordingly, the U. S. Supreme Court should seize this opportunity to address such a fundamental issue as the extent to which a citizen is in fact protected by the Fourteenth Amendment against State action to strip him of significant life, liberty, and/or property interests in violation of the very laws which his State has enacted to protect its citizens from arbitrary State action and from such other State action as those who have been elected to govern have determined inappropriate.

Recent rulings in at least two U. S. Courts of Appeal indicate that the Fourteenth Amendment's Due Process mandate requires *only* that the bare minimum requirements of Due Process be afforded a citizen in a State action to deprive him of a significant life, liberty, or property interest, such that the Due Process Clause is *not* implicated "*merely*" because a State acts to deprive a citizen of such interest(s) in violation of the State's own statutory/regulatory enactments. See, Gray v. Laws, 51 F.3d 426 (4th Cir. (N.C.) 1995), aff'd 87 F.3d

1308 (1996); Giovanni v. Lynn, 48 F.3d 908 (5th Cir. 1995). *See also*, Riccio v. County of Fairfax, 907 F.2d 1459 (4th Cir. 1990); Holloway v. Walker, 790 F.2d 1170 (5th Cir.1986).

Moreover, the Virginia Supreme Court has *resoundingly* so ruled in the case at bar (albeit not expressly), and has *clearly* evinced that, in Virginia, an individual is not considered protected by the Fourteenth Amendment from being stripped of his right to practice law in virtual *total* disregard of the regulatory and procedural provisions the State has enacted to govern such matters and safeguard his rights.

On the other hand, however, *other* U. S. Circuits and State Courts of last resort hold that Due Process *does* demand that a State substantially comply with its own laws when acting to deprive a citizen of a Constitutionally protected right/ interest. Patterson v. Coughlin, 761 F.2d 886, 891 (2nd Cir. 1985); Dwyer v. Regan, 777 F.2d 825 (2nd Cir. 1985) ; Rodrigues v. Donovan, 769 F.2d 1344 (9th Cir. 1985); Bretz v. Kelman, 773 F2d 1026 (9th Cir. 1985).

Furthermore, rulings to the contrary fly in the face of black-letter law that governmental agencies/officials have no legal authority/jurisdiction to act against individuals *other* than in substantial compliance with lawfully adopted enabling statutes and regulatory procedure. See, Vitarelli v. Seaton, 359 U.S. 535 (1959); Bridges v. Wixon, 326 U.S. 135, 152,153 (1945); Oklahoma Aeotronics, Inc. v. United States, 661 F.2d 976 (D.C. Cir. 1981); People v. Martin, 46 N.E. 484 (N.Y. 1897); State v. Northern Pacific Railway Company, 75 N.W.2d 129 (N. D. 1956); Union Light, Heat & Power Co. v. Public Service Commission, 271 S.W.2d 361 (Ky. 1954). *See also*, Fruhling v. County of Champaign, 420 N.E.2d 1066 (Ill.App. 1981); City of Pittsburgh v. Pennsylvania Public Util. Com'n., 43 A.2d 348 (Pa.Super 1945).

Whether the Fourteenth Amendment requires a State to substantially comply with the dictates of its own regulatory schemes when acting to permanently deprive a citizen of Constitutionally protected interest(s) is an issue *not* heretofore addressed by this Court in a context such as that presented

by the case at bar,* i.e., when *the entirety of* the State's prosecutorial/adjudicatory process has been tainted with jurisdictional defects and violations of applicable State law. Such a fundamental issue respecting the most basic of U. S. Constitutional guarantees should be definitively addressed by this Court: the citizens of this nation should be so apprised if they have no Constitutional right to rely upon their State abiding by the terms of its own lawful statutory and regulatory provisions and procedures. Accordingly, this Court should grant Certiorari because that issue is now *squarely* before the Court, as the disciplinary charges of which Sawyer now stands convicted were *clearly* neither brought nor adjudicated against her in substantial compliance with the substantive and procedural protections accorded her under Virginia law.

A) Charges were not lodged against Sawyer in accord with State law.

Only those charges certified against Sawyer in accord with the District SubCommittee's legal authority to certify charges were such as could have been lawfully adjudicated by the Disciplinary Board. Accord, State v. Common Council of Duluth, 55 N.W. 118 (Minn. 1893). However, not only did the putative "Certification" filed against Sawyer not meet the criteria of a SubCommittee "certification" of charges under State law [*see* pp. 12, 13 *supra*], the SubCommittee's

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* Parratt v. Taylor, 451 U.S. 527 (1981) and its progeny are inapposite. For example, not only does this cause not involve a "Section 1983" claim, it does not implicate an analysis of the adequacy of "pre"deprivation process afforded in light of the adequacy of available "post" deprivation process. In the case at bar, the *only* adjudicatory process received -- *or available* -- to Your Petitioner was the unlawful pre-deprivation process effected against her, and there is, obviously, *NO* adequate post-termination remedy available to her.

"Certification" was never approved by a State Bar District Committee as required by State law. *See* p.13, *supra*.

B) The tribunal which adjudicated the charges had no jurisdiction to adjudicate charges against Sawyer.

Because Sawyer was never served with notice of the disciplinary charges against her as required by Section 54.1-3938 of the Code, the Virginia State Bar Disciplinary Board never acquired jurisdiction to adjudicate any charge against her* -- and an adjudication conducted by a State tribunal *without jurisdiction* is a *per-se* violation of the process one is due. Accord, *e.g.*, People v. Martin, *supra*.

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* Although Section 54.1-3938 of the Code mandates either *personal* service of process* *or* service of process by order of publication on proper affidavit," *service of process* was in *no* fashion *ever* effected on Sawyer. However, Par. 13 (C)(5)(a) entitles an attorney to a 21 day period *after* such service to elect to have the charges against him/her adjudicated by a three judge panel rather than the Disciplinary Board. Accordingly, because never served with process, Sawyer's 21 day period within which to elect to have any disciplinary charges against her determined by a panel of judges [and to invoke other related statutory rights] never commenced to run, and jurisdiction never vested in the State Bar Disciplinary Board. [Notably, the only manner by which jurisdiction may vest in the Disciplinary Board is by a Respondent's filing of an Answer to a Certification, and Sawyer never filed an Answer.]

C) Sawyer was not afforded the required notice of her hearing.

The Disciplinary Board did not "*serve notice upon*" Sawyer of her hearing "*at least 21 days prior to the date fixed for the hearing*" as required by Para. 13(C) (5) and, as a result, the Board had no authority/jurisdiction to conduct its hearing.

D) Sawyer stands convicted of disciplinary charges not lodged against her by a State actor with authority to lodge charges against her.

Because, in Virginia, in non-emergency cases, *only* State Bar District Committees/ SubCommittees have authority to certify disciplinary charges to the State Bar Disciplinary Board for adjudication,* Par. 13 (C)(3), the Disciplinary Board had no authority/ jurisdiction to convict Sawyer, as it did, of offenses other than those charged by the District Subcommittee against her. *Similarly*, the District SubCommittee had had no authority to "certify" any charge against Sawyer to the Disciplinary Board for adjudication because Bar Counsel had filed no disciplinary charge with the District Committee for consideration. VSBC RULES II(C), III(B).

E) The prosecution against Sawyer was time-barred.

Although the Bar was required by State law to have filed, and notified Sawyer of, any disciplinary charges it deemed appropriate to pursue against her within 60 days of its receipt of Andre's complaint, the Bar first charged Sawyer with disciplinary infractions more than four years after the expiration of that 60 day period. For such reason, the Virginia State Bar no longer had jurisdiction to prosecute disciplinary charges against Sawyer and, moreover, its prosecution was *also otherwise* un-Constitutionally stale.

2. Certiorari should be granted because the Supreme Court of Virginia has ruled that the Fourteenth Amendment's Due Process Clause does not require a State to articulate the manner in which the State asserts an attorney has violated Disciplinary Rules prior to the State's conduct of an adjudicatory hearing to disbar him and, even though its ruling is in accord with opinions of some other State courts of last resort,* its ruling directly contravenes well-established precedent of this Court** and of other State courts of last resort*** and, moreover, an adjudicatory Due Process guarantee is essentially meaningless unless construed as requiring that a State elucidate the nature of the State's charges before the State may act to permanently negatively impact an individual's good reputation and deprive him of his legal right to continue in the practice of law.

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* See, Florida Bar v. Nowacki, 697 So.2d 828 (Fla. 1997); Florida Bar v. Solomon, 711 So.2d 1141 (Fla. 1998).

** See, In Re: Ruffalo, 390 U.S. 544 (1968); Lankford v. Idaho, 500 U.S. 124, 111 S.Ct. 1723, 114 L.Ed.2d 173 (1991). [Although Zauderer v Office of Disciplinary Counsel, 471 U.S. 626 (1985) appears to constitute somewhat of a variance aberration from In Re: Ruffalo, Zauderer is in any event inapplicable to the case at bar because, as opposed to the Board of Commissioners in Zauderer, the State Bar Disciplinary Board in Virginia does not merely make disciplinary recommendations, it actually imposes discipline, and the Virginia Supreme Court affords only appellate review.

*** State v. Common Council of Duluth (Minn.), *supra*; In re: McKay, 191 So.2d 1 (Ala. 1966)

Unless the disciplinary infraction(s) charged are specified in advance of his/her hearing, an attorney is unable to adequately prepare or present his defense. During the course of closing arguments is no time for *any* defendant to first be apprised of the nature of his State's [*alleged*] "complaints" against him!

A) The Bar's statement of charges was unconstitutionally vague on its face.

The "Certification" was too nebulous to meet Due Process standards because it failed to allege which, *if any*, aspect of the Disciplinary Rules Sawyer was charged with violating as a consequence of any of the particular allegation(s) of fact contained therein and, moreover, because it asserted *not one* legally sufficient charge in respect to the many Disciplinary Rule infractions of which Sawyer was ultimately convicted.*

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* For example, although Sawyer stands convicted under DR1-102(A)(3) based upon allegations of "evading" "the service of process and the capias" and "failing to comply with the court order" [App. K], the Certification of charges not only made *no* reference *whatsoever* to *evasion* of a capias (*or* of *any other* service of process),* it had *not* alleged *either* that such evasion *or* that Sawyer's refusal to comply with the void orders in the absence of a final adjudication of her jurisdictional objections were "*deliberately wrongful*" *or* a "*crime*."

By way of *further* example, although Sawyer was also convicted under DR 9-102(B)(4) for failure to comply with the two void orders, the Certification had not alleged that either Worcester or Conner had "*requested*" *any* funds or other properties in Sawyer's possession, that *either* was *actually* "*entitled* to receive" any monies not paid them, *or* that the *non-existent* "legal rate" interest awarded against her had *ever* constituted "funds in [Sawyer's] possession," and yet the "as requested by such person," the "which such person is entitled to receive," and the "funds in the possession of the lawyer" aspects of DR 9-102(B)(4) are not elements of charges thereunder which could, or may, simply be ignored.

Indeed, it was *precisely* because the Certification did *not* set forth a legally sufficient statement of *any* charge against Sawyer that State Bar Counsel was in a position at the close of Sawyer's hearing to "define" the Bar's "charges" against Sawyer in ***ANY*** manner she wished -- *and* that the Bar had the temerity, ON ***APPEAL***, to advance ***YET ENTIRELY NEW*** theories as to the grounds upon which to found Sawyer's convictions! In sum, the Certification did not place Sawyer on fair notice of any particular charge(s) against her.

B) The Bar's statement of charges against Sawyer was even more unconstitutionally vague as applied.

Even though *Due* Process obviously prohibits a State adjudicatory tribunal from convicting a citizen of infractions with which he has never been charged, the Bar even *stipulated* during closing arguments that the *sole* grounds for its charges against Sawyer under DR1-102(A)(4) & DR 2-105(C) were allegations *totally* unrelated to *any* allegation "certified" to the Board. [*See*, p.16 *supra*; *See also*, Ap. CC]

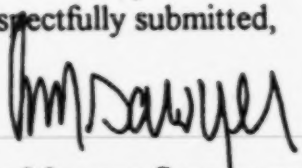
3. Certiorari should be granted to decide the important question of whether the minimum notice required by the Due Process Clause of a disciplinary hearing is satisfied, as the Virginia Supreme Court has ruled, by the forwarding of *solely* one certified mailing to a valid address, * soon marked "unclaimed' and returned to sender, since such appears to *directly* contravene legal precedent set by this Court.

As noted in Sawyer's Opening Brief on appeal to the Virginia Supreme Court [See, Ap. I], Due Process requires the notice that is due, and the notice due an attorney of a disciplinary hearing at which he/she may be disbarred is *MORE* than one certified mailing "returned to sender" and KNOWN *NOT* to have been received by the attorney -- and *especially* when the Bar is *quite* capable of contacting the attorney, even simply via a *regular* mailing. Accord, Parratt v Taylor, *supra*, 451 U.S. at 538, citing Mullane v. Central Hanover Trust Co., 339 U.S. 306, 315 (1950). "[W]hen notice is a person's due, process which is a mere gesture is not due process." Mullane at 315.

CONCLUSION

There is no Due Process when there has not been fair notice and at least substantial compliance with the process of law. Therefore, for all of the foregoing reasons, Your Petitioner respectfully requests that this Honorable Court grant her Petition for a Writ of Certiorari.

Respectfully submitted,



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